



Comptroller General  
of the United States

809261

Washington, D.C. 20548

## Decision

**Matter of:** Eagle Creek Archaeological Services, Inc.

**File:** B-258480

**Date:** January 25, 1995

Neal H. Heupel for the protester.

Doug Lee, Department of Agriculture, for the agency.  
Katherine I. Riback, Esq., and Daniel I. Gordon, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Protester's late receipt of a solicitation amendment, which allegedly had the effect of causing the protester to decide not to submit a bid, does not warrant resolicitation of the procurement where there is no evidence that the agency deliberately attempted to exclude the protester from the competition.

### DECISION

Eagle Creek Archaeological Services, Inc. protests the award of a contract to Continuum Cultural Resource Consultants, Inc. under invitation for bids (IFB) No. R6-4-94-90, issued by the U.S. Forest Service, Malheur National Forest, for a cultural resource survey of the Wolf Creek Watershed Area. Eagle Creek contends that the agency improperly failed to timely furnish the firm with a copy of a solicitation amendment, and that this failure precluded the protester from submitting a bid. Eagle Creek asserts that the solicitation should be canceled and the requirement resolicited in order to give Eagle Creek an opportunity to bid.

We deny the protest in part and dismiss it in part.

The IFB was issued on July 12, 1994, with an August 12 bid opening date. The agency mailed a copy of the solicitation to the protester's Aloha, Oregon address. On August 10, the agency issued amendment No. 1 which, among other things, added a requirement for contractor compliance with Oregon licensing requirements for recording certain site data, and extended the bid opening date to August 22. On August 17, the protester informed the contracting officer that it had not received amendment No. 1, and of its change of address

to Sandy, Oregon. The protester received amendment No. 1 at its new Sandy, Oregon address. The protester states that it decided not to bid on this contract due to the "unclear nature" of the contractor licensing requirement contained in amendment No. 1.

The agency issued amendment No. 2 on August 18, which deleted the requirement for contractor compliance with the Oregon licensing requirements for recording certain site data, and extended the bid opening to August 29. The agency mailed amendment No. 2 to Eagle Creek's former address in Aloha, Oregon. The Aloha Post Office stamped the letter upon receipt, affixed to it a change of address sticker with Eagle Creek's Sandy, Oregon address, but nonetheless stamped the letter "Return to Sender." The letter was returned to the agency and date stamped on August 25. According to the contracting officer, this letter reached the agency at a time when its normal staff of eight was reduced to two, due to fire assignments, vacations, and personal injury. As a result, the agency did not forward the letter containing amendment No. 2 to Eagle Creek until after bid opening.

Eagle Creek argues that the agency's failure to timely furnish it with a copy of amendment No. 2 had the effect of improperly excluding the firm from the competition. Eagle Creek maintains that the circumstances suggest that the agency's failure represented a deliberate attempt to prevent the firm from competing. Eagle Creek concludes that the requirement should be canceled and resolicited.

It is the contracting agency's affirmative obligation to use reasonable methods for the dissemination of solicitation documents, including amendments, to prospective competitors. Federal Acquisition Regulation (FAR) §§ 14.203-2, 14.205, and 14.208; Western Roofing Serv., 70 Comp. Gen. 323 (1991), 91-1 CPD ¶ 242. However, this does not make the contracting

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Eagle Creek also argues that the licensing requirement included in the solicitation by amendment No. 1 was improper, as evidenced by the agency's deletion of this requirement in amendment No. 2. This allegation is untimely, and will not be considered. Challenges to alleged improprieties which did not exist in the initial solicitation but which are subsequently incorporated into the solicitation by amendment must be protested no later than the next closing time set for receipt of proposals following the incorporation. Servicio Internacional de Proteccion Baker, S.A., B-241670, Jan. 22, 1991, 91-1 CPD ¶ 64. Moreover, the challenge to the requirement was rendered academic by its removal in amendment No. 2.

agency a guarantor that these documents will be received in every instance. Power Eng'g Contractors, Inc., B-241341, Feb. 6, 1991, 91-1 CPD ¶ 123. Rather, as a general rule, the risk of nonreceipt of an amendment rests with the offeror. Western Roofing Serv., *supra*.

In this case, the record reflects inadvertent errors on the part of the Forest Service but does not show any deliberate attempt on the part of the agency to exclude the protester from competition. In Viktoris F.I.T., GmbH, B-233125 *et al.*, Jan. 24, 1989, 89-1 CPD ¶ 70, we found inadvertent the agency's failure to update its bidder's mailing list, after it was informed of the protester's change of address, although it resulted in the amendments being mailed to the protester's prior address and received by the protester after the solicitation's closing dates. Here, while the protester informed the agency of its change of address and the agency did mail the first amendment to its new address, the contracting officer neglected to update the mailing list, with the result that amendment No. 2 was mailed to Eagle Creek's previous address. For reasons unclear in the record, the Post Office returned the letter to the agency, rather than forwarding it to the new address. When the letter was returned to the agency, a personnel shortage resulted in the agency's failure to promptly forward the letter to the protester.

Since nothing in the record shows that the agency acted deliberately to preclude Eagle Creek from competing, or otherwise violated applicable regulations governing the distribution of amendments, Eagle Creek's nonreceipt of amendment No. 2 does not warrant resolicitation of the procurement where, as here, the record shows that adequate competition and reasonable prices were obtained. *Id.*

Finally, Eagle Creek objects to the award on the basis that the awardee, Continuum Cultural Resource Consultants, Inc., discarded a letter from the agency which contained amendment No. 2, and which was addressed to Eagle Creek at its Aloha, Oregon address, but was improperly forwarded to Continuum. This matter involves a dispute between private parties which is beyond the scope of our bid protest jurisdiction and is

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<sup>2</sup>The President of Eagle Creek apparently had been a part owner of Continuum, and Continuum's mail was forwarded from his address in Aloha, Oregon to Denver, Colorado. Eagle Creek's mail should have been forwarded from this same address in Aloha, Oregon, to an address in Sandy, Oregon.

properly for resolution by the private parties through the courts, if necessary. DTM Inc., B-241270.2, Feb. 15, 1991, 91-1 CPD ¶ 178.

The protest is denied in part and dismissed in part.

\s\ Paul Lieberman  
for Robert P. Murphy  
General Counsel